902 KAR 48:040. Permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement.

RELATES TO: KRS 211.180, 217.801, 40 C.F.R. Part 745.227

STATUTORY AUTHORITY: KRS 211.090(3), 211.9061-211.9075

NECESSITY, FUNCTION, AND CONFORMITY: The Department for Public Health is required by statute to promulgate administrative regulations relating to lead-hazard detection and abatement. This administrative regulation establishes permit fees, permit requirements and procedures, and standards for performing lead-hazard detection and abatement activities in target housing or child-occupied facilities.

Section 1. Work Practice Requirements and Methodologies. Lead-hazard detection and abatement activities shall comply with:

(1) The work practice standards and procedures established by this administrative regulation;

(2) Documented methodologies recognized in federal EPA rules identified in 40 CFR Part 745.227, "Work practice standards for conducting lead-based paint activities: target housing and child-occupied facilities"; or

(3) Equivalent methodologies.

Section 2. Lead-hazard Inspections. A lead-hazard inspection shall comply with the following work practice standards and procedures:

(1) An inspection shall be conducted by a certified lead-hazard inspector or lead-hazard risk assessor.

(2) The sites and components specified in subsection (3) of this section shall be:

(a) Selected according to technical methodologies specified in Section 1 of this administrative regulation; and

(b) Tested for the presence of lead in paint;

(c) Excluded from testing if the inspector or risk assessor determines that the components were:

1. Replaced after 1978; or

2. Not coated with lead-containing paint or similar coating.

(3) The sampling scheme shall be as follows:

(a) For a single residential dwelling or child-occupied facility, interior and exterior components with a distinct painting history; and

(b) For a multifamily dwelling or child-occupied facility, additional components with a distinct painting history in common areas.

(4) Paint shall:

(a) Be sampled under the technical methodologies specified in Section 1 of this administrative regulation; and

(b) Tested in the following manner:

1. The analysis of paint to determine the presence of lead shall be conducted using documented methodologies that incorporate quality control procedures; and

2. Paint chip samples that have been collected shall be analyzed by an EPA-recognized laboratory to determine if they contain hazardous levels of lead.

(5) A certified lead-hazard inspector or risk assessor shall prepare an inspection report that shall include the following:

(a) Date of each inspection;

(b) Address of building;

(c) Date of construction;

(d) Apartment numbers, if applicable;

(e) Name, address, and telephone number of the owner of each residential dwelling or child-occupied facility;

(f) Name, signature, and certification number of the certified inspector or risk assessor who conducted the inspection;

(g) Name, address, and telephone number of the firm or individual employing each inspector or risk assessor, if applicable;

(h) Name, address, and telephone number of the laboratory that conducted an analysis of collected samples, if applicable;

(i) The testing method, testing device, or sampling procedure employed for paint analysis, including:

1. Quality control data; and

2. If used, the serial number and radioactive materials license number of the XRF device;

(j) Specific locations of each painted component tested; and

(k) The results of the inspection expressed in terms appropriate to the sampling method used.

(6) A copy of the lead-hazard inspection report shall be submitted to the department within thirty (30) days after the completion of the inspection.

Section 3. Lead-hazard Screens. A lead-hazard screen shall comply with the following work practice standards and procedures:

(1) A lead-hazard screen shall be conducted by a certified lead-hazard risk assessor.

(2) For a residential dwelling or child-occupied facility, the lead-hazard risk assessor shall:

(a) Collect background information regarding the physical characteristics and occupant use patterns of the residential dwelling or child-occupied facility that may cause lead exposure to a child;

(b) Conduct a visual inspection to determine if deteriorated paint is present;

(c) Test for the presence of lead on each surface with deteriorated paint determined to have a distinct painting history;

(d) Collect paint chip and dust samples using the technical methodologies specified in Section 1 of this administrative regulation;

(e) Collect at least two (2) composite dust samples from each room where children are most likely to come in contact with dust, as follows:

1. One (1) from the floors; and

2. One (1) from the window troughs or sills;

(f) For a multifamily dwelling, collect one (1) additional sample from each common area where children are most likely to come in contact with lead dust;

(g) Submit paint chip or dust samples to an EPA-approved laboratory for analysis;

(h) Prepare a lead-hazard screening report that shall include:

1. The applicable component information required for a complete lead-hazard risk assessment identified in subsection (4) of this section; and

2. If warranted, recommendations for a follow-up risk assessment and other appropriate action; and

(i) Submit to the department, within thirty (30) days from the completion of the assessment, a copy of the lead-hazard screening report.

Section 4. Lead-hazard Risk Assessments. Risk assessment shall comply with the following work practice standards and procedures shall comply with the provisions of this section.

(1) A risk assessment shall be conducted by a certified risk assessor.

(2) A risk assessor shall:

(a) Collect samples using a methodology specified in Section 1 of this administrative regulation;

(b) Conduct a visual inspection of a residential dwelling or child-occupied facility to:

1. Locate deteriorated paint;

2. Assess the extent and causes of the deterioration of paint; and

3. Inspect for other potential sources of lead hazard;

(c) Collect information regarding the physical characteristics and occupant use patterns of the residential dwelling or child-occupied facility that may cause lead exposure to children;

(d) Test every surface coated with visibly-deteriorated paint for the presence of lead;

(e) For a residential dwelling, collect dust samples, either composite or single surface, from the interior window sill(s) and floor, where children are most likely to come into contact with dust;

(f) For a multifamily dwelling, collect additional dust samples in the following locations:

1. Each common area adjacent to the residential dwelling or child-occupied facility from which samples have been taken; and

2. Each common area in the building;

(g) For a child-occupied facility, collect dust samples in the following locations:

1. Each room, hallway or stairwell; and

2. Other common areas;

(h) Collected soil samples at the following locations:

1. Exterior play areas where bare soil is present;

2. Dripline or foundation areas where bare soil is present; and

3. The rest of the yard where bare soil is present;

(i) Submit collected paint chip, dust, or soil samples to an EPA-recognized laboratory; and

(j) Prepare a lead-hazard risk assessment report.

(3) The information provided in a report shall include:

(a) Date of assessment;

(b) Address of each building;

(c) Date of construction of buildings;

(d) Apartment numbers, if applicable;

(e) Name, address, and telephone number of each owner of each building;

(f) Name, signature, and certification number of the certified risk assessor conducting the assessment;

(g) Name, address, and telephone number of the firm or individual employing each certified risk assessor, if applicable:

(h) Name, address, and telephone number of each recognized laboratory conducting an analysis of collected samples;

(i) Results of the visual inspection;

(j) Testing method and sampling procedure for paint analysis employed;

(k) Specific locations of each painted component tested for the presence of lead;

(l) Diagram or floor plan showing testing locations;

(m) Data collected from on-site testing, including:

1. Quality control data; and

2. If used, the serial number of the XRF device;

(n) Results of laboratory analysis on:

1. Collected paint;

2. Soil; and

3. Dust samples;

(o) Other sampling results;

(p) Background information collected described at subsection (2)(c) of this section;

(q) The history of any previous inspection or analysis for the presence of lead, lead assessments, or other lead hazards found in the residence, that have been given consideration, as a part of the present hazard determination;

(r) A description of:

1. The location, type, and severity of identified lead hazards associated with paint; and

2. Other potential lead hazards;

(s) A description of interim controls or abatement for each identified lead hazard, including:

1. Description of interim controls or abatement options; and

2. Recommendations for addressing the lead hazard; and

(t) If the use of an encapsulant or enclosure is recommended, a suggested maintenance and monitoring schedule is required.

(5) A copy of the lead-hazard risk assessment report shall be submitted to the department within thirty (30) days after the completion of the assessment.

Section 5. Abatement Permit Application. (1) The following items shall be submitted to the department by the certified person who prepared the abatement plan:

(a) An abatement plan with components as identified in Section 7(b) of this administrative regulation;

(b) An occupant protection plan with components identified in Section 7(c) of this administrative regulation; and

(c) The fee established by Section 6 of this administrative regulation.

(2) The department shall consider and render a decision regarding an application in accordance with KRS 211.9063(6).

(3) If an application is not approved, the applicant shall:

(a) Be notified in writing of the deficiencies;

(b) Correct the deficiencies indicated in the department's notice of disapproval; and

(c) Submit to the department:

1. The corrected application; and

2. An additional application review fee.

(4) An abatement permit shall be valid for the dates of issuance, unless extended by the department for the following conditions:

(a) Written request seven (7) days prior to expiration date by the permit holder; and

(b) Provision of the following information:

1. Amended dates of abatement;

2. An amended abatement plan, if applicable; and

3. An amended occupant protection plan, if applicable.

(5) If the lead-hazard abatement activity has not been completed within the dates of issuance or permit dates extended, the permit holder shall:

(a) Apply for an amended permit; and

(b) Pay the amended permit fee established in Section 6 of this administrative regulation.

Section 6. Application and Permit Fee Schedule. (1) The fee for a lead-hazard abatement permit shall be:

(a) For each single family dwelling or child-occupied facility, $225;

(b) For a multifamily dwelling, $100 per residence;

(c) Exterior abatement, $125 per building; and

(d) Soil abatement, fifty (50) dollars per project.

(2) Other fees required are:

(a) Application review fee, fifty (50) dollars;

(b) Amended permit, twenty-five (25) dollars; and
(c) Reinspection fee, $100.

Section 7. Lead-hazard Abatement and Occupant Protection Plans. Standards and requirements for abatement and occupant protection plans are as follows:
(1) Abatement and occupant protection plans shall be prepared a certified project designer if:
(a) The project is a large-scale project; and
(b) The planned abatement activity creates additional lead waste material not considered low waste, such as:
1. Filtered personal or commercial water;
2. Disposable personal protective clothing; and
3. Plastic sheeting.
(2) An abatement plan shall include:
(a) Name and certification number of the individual who prepared the plan;
(b) Name and certification numbers of all individuals working at the site;
(c) Anticipated start and finish dates;
(d) Daily work hours at the project;
(e) Copy of job specifications relating to the project;
(f) Location of the site;
(g) Type of structure;
(h) Sequence of work activity;
(i) Abatement methods to be used;
(j) Diagram or floor plan showing abatement locations;
(k) Enclosure and containment methods and locations;
(l) Locations of rooms and components where abatement will occur;
(m) Reason for the selection of particular abatement methods for each component;
(n) If encapsulants are to be used, product usage information;
(o) Cleanup measures; and
(p) Name and address of individual conducting clearance testing.
(3) An occupant protection plan shall:
(a) Be unique to the residential dwelling or child-occupied facility;
(b) Developed prior to the abatement; and
(c) Be a detailed, written description of the measures and management procedures that will be taken during the abatement to protect the occupants of the building from exposure to lead hazards.

Section 8. Lead-hazard Abatement On-site Project Requirements. (1) In compliance with KRS 211.9063(5), a lead-hazard abatement activity shall not be conducted until the department issues a permit.
(2) The abatement permit shall be kept at the abatement site until:
(a) Project is complete;
(b) Clearance is achieved; and
(c) The department has conducted the quality assurance inspection required by KRS 211.9063(6).
(3) Only a certified person shall be allowed on the abatement site during the time that abatement activities are being conducted.
(4) A certified person shall keep the department-issued identification card in possession while on site.
(5) The certified supervisor or certified project designer who prepared the abatement plan

shall be:

(a) Available, within two (2) hours, to the lead-abatement workers while lead-abatement activities are conducted; and

(b) On site during:

1. Work site preparation;

2. The postlead-abatement cleanup of work areas; and

3. At the time of the departmental quality assurance inspection.

(6) The lead-abatement permit holder shall ensure that a lead abatement and postlead-abatement activity complies with applicable federal, state, and local law and requirements.

Section 9. Specific Lead-Hazard Abatement Practices. (1) Soil abatement shall be conducted as follows:

(a) If soil containing a hazardous level of lead is removed, the permit holder will provide analytical information to the department that the replacement soil does not contain amounts over the established soil lead-hazard levels; or

(b) If soil containing a hazardous lead level is not removed, the lead hazard in the soil shall be considered as abated when permanently covered by a method identified in Section 1 of this administrative regulation.

(2) The following work practices used for paint removal shall be prohibited:

(a) Open-flame burning or torching; or

(b) Machine sanding or grinding, or abrasive blasting or sandblasting unless conducted using a high efficiency particulate air exhaust control that removes particles of three-tenths (0.3) microns or larger from the air at 99.97 percent or greater efficiency.

(c) Dry scraping unless:

1. In conjunction with heat guns; or

2. Around electrical outlets; or

3. In the treatment of defective paint spots that total no more than:

a. Two (2) square feet on surfaces within a room; or

b. Twenty (20) square feet on exterior surfaces.

(d) Use of a heat gun at temperatures that exceed 1,100 degrees Fahrenheit.

Section 10. Postabatement Clearance Procedures. (1) Postabatement clearance procedures shall be performed according to a method identified in Section 1 of this administrative regulation.

(2) Postlead-hazard abatement clearance shall be performed by a certified inspector or certified risk assessor.

(3) Postlead-hazard clearance after a nonabatement activity, such as renovation or remodeling, shall be performed by a certified inspector, risk assessor, or sampling technician.

(4) A visual inspection shall be conducted before sampling to examine for deteriorated paint, dust or debris.

(5) Clearance sampling shall not take place if deteriorated painted surfaces or visible amounts of dust or debris are found during the visual inspection.

(6) Sampling shall be conducted using single or composite dust sampling as identified in Section 1 of this administrative regulation.

(7)(a) The certified person who conducted the clearance shall compare the residual lead levels, as determined by the laboratory analysis from each dust sample, with clearance levels established by Section 13 of this administrative regulation.

(b) If the residual lead levels in a dust sample exceed accepted clearance levels, each component represented by the failed sample shall be recleaned and retested until clearance levels have been met.

(8) In a multifamily dwelling with similarly-constructed and maintained residential units, random sampling for clearance shall be conducted in accordance with documented methodologies. The person who conducted the lead-hazard abatement and postabatement cleanup in the residential dwelling shall not be provided knowledge of the units selected for the random sample.

Section 11. Clearance Report. (1) After clearance, the certified person shall prepare a report containing the following information:

(a) Name of the individual conducting the clearance;

(b) Departmental certification number;

(c) Address of the property;

(d) Specified units and areas effected;

(e) Dates of clearance examination;

(f) Results of visual assessment;

(g) Results of dust sample analysis;

(h) Name and address of laboratory used;

(i) Project activity information; and

(j) Lead-hazard reduction or abatement methods used.

(2) A copy of the lead-hazard clearance report shall be submitted to the department within thirty (30) days after the completion of the clearance.

Section 12. Levels of Lead in Paint. The following lead levels shall be used to determine if paint or similar coatings are considered as lead-based paint:

(1) Equal to or in excess of one (1.0) milligrams per square centimeter; or

(2) More than five-tenths (0.5) percent by weight.

Section 13. Dust Lead Hazards. The maximum acceptable levels used for clearance or other evaluation after the disturbance of lead paint, or for determination of potential lead dust hazards in a residential structure or child-occupied facility, are as follows:

Floors	40
Interior Window Sills	250
Window Troughs	400
Exterior Components	800

Section 14. Soil Lead Hazards. Soil is considered to be a lead hazard on residential property or at a child-occupied facility if the lead level exceeds:

(1) 400 parts per million in a play area; or

(2) 1,200 parts per million of bare soil in the rest of the yard.

Section 15. Quality Assurance Inspection. (1) A permit holder shall notify the department of the completion of the abatement services and clearance testing.

(2) The department shall proceed in accordance with quality assurance inspection provisions of KRS 211.9063(6).

(3) An abatement permit holder shall provide the department with access to the project unit to conduct a quality assurance inspection.

(4) If a department inspector discovers visual dust or paint chips, or violative work practices and standards, the inspector shall:

(a) Not conduct sampling; and

(b) Notify the permit holder that another inspection shall be conducted after:

1. Cleanup has been completed; and
2. Another clearance is conducted.
(5) If a dust sample exceeds clearance levels:
(a) The components making up the failed sample shall be:
1. Recleaned; or
2. Otherwise lead-hazard abated; and
(b) Another clearance shall be conducted.
(6) For each failed inspection a permit holder shall pay a reinspection fee as established by Section 6 of this administrative regulation.

Section 16. Postabatement Report. (1)(a) A postabatement report shall be prepared by either the certified lead-hazard supervisor or lead-hazard project designer who prepared the abatement plan.
(b) The postabatement report shall include the:
1. Start and completion dates of abatement;
2. Name and addresses of the certified individual preparing the report;
3. Changes made to the occupant protection plan and the abatement plan;
4. Name, address, and signature of each certified risk assessor or certified inspector conducting clearance sampling and the date of clearance testing;
5. The name of each recognized laboratory that conducted the analysis;
6. Results of:
a. Clearance testing; and
b. Soil analysis, if applicable; and
7. Suggested monitoring of encapsulation or enclosure plan according to a methodology identified in Section 1 of this administrative regulation.
(2) The postabatement report shall be submitted to the department within thirty (30) days after the completion of the abatement project.

Section 17. Recordkeeping. A report required by this administrative regulation shall be retained by the permit holder, or other certified individual who prepared the report, for three (3) years.

Section 18. Administrative Hearings. An administrative hearing relating to the subject matter of this administrative regulation shall be conducted in accordance with 902 KAR 1:400. (28 Ky.R. 1288; 1875; eff. 2-7-2002.)